UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 25th day of April, two thousand and two.

PRESENT: HON. JAMES L.OAKES,

HON. DENNIS JACOBS,

HON. GUIDO CALABRESI,

Circuit Judges

APPENDIX A

STAMP: UNITED STATES COURT OF APPEALS

SECOND CIRCUIT FILED APR 25, 2002

Roseann B. MacKechnie, CLERK

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GEORGE E. ASHKAR,

Plaintiff-Appellant,

-v.- 01-6210

DR. ANDREW VON ESCHENBACH,

Defendant-Appellee,

----------X

APPEARING FOR APPELLANT:

GEORGE E. ASHKAR, pro se,

Oakland Gardens, NY.

APPEARING FOR APPELLEE:

KATHLEEN A. NANDAN, Assistant

United States Attorney,

Brooklyn, NY (Alan Vinegrad,

United States Attorney for the

Eastern District of New York;

Deborah B. Zwany, Assistant

United States Attorney, on the brief).

Appeal from the United States District Court for the Eastern District of New York (Gleeson, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be AFFIRMED.

George E. Ashkar, pro se, appeals the district court's dismissal of his complaint against former Director of the National Cancer Institute, Dr. Richard Klausner. We affirm for substantially the reasons stated in Judge Gleeson's Memorandum and Order. See Ashkar v. Klausner, 01-CV-0507(E.D.N.Y. Aug.1,2001).

FOR THE COURTS:

ROSEANN B. MACKECHNIE, CLERK

By:

s/Lucille Carr/

Lucille Carr, Deputy Clerk

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

MEMORANDUM AND ORDER

01-CV-0507(JG)

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GEORGE E. ASHKAR, PhD,

Plaintiff,

-against-

RICHARD D. KLAUSNER, M.D.,

Defendant.

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APPEARANCES

GEORGE E. ASHKAR

61-37 Bell Boulevard

Oakland Gardens, New York 11364-2239

Plaintiff Pro Se

ALAN VINEGRAD

United States Attorney

Eastern District of New York

One Pierrepont Plaza, 14th Floor

APPENDIX B

Brooklyn, New York 11201

By: Kathleen A. Nandan

Assistant United States Attorney

Attorney for Defendant

JOHN GLEESON, United States District Judge:

Plaintiff pro se, George E. Ashkar, a physicist, has brought suit against Richard Klausner, a physician and Director of the National Cancer Institute ("NCI") at the National institute of health ("NIH"). The case involves plaintiff's longstanding disagreement with the NCI's views regarding how to cure and prevent cancer. Reasoning that it is "becoming popular" to bring important disputes into federal court-"after [the] solving [of] the presidential election between Bush and Gore in the Supreme Court," Complain, at 2 - Ashkar wants me to solve the issue once and for all. Specifically, he alleges that defendant has harmed him and the public by refusing to fund and use the novel cure for cancer that plaintiff discovered in 1943. He requests that I:(1) stop all radiation and chemotherapy treatments; (2) direct NCI to use plaintiff's treatment method,

under his supervision, for at least five years; (3) punish NCI for using chemotherapy and for refusing to implement plaintiff's cure; and (4) award monetary compensation for plaintiff's time spent researching and developing his cure. Defendant has moved to dismiss the complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

For the following reasons, the motion is granted.

FACTS

Plaintiff claims to have developed a cure for "non-viral bacterial disease," which he calls "Neutral-Infection Absorption ("NIA")." Complain, at 2. His cure, which he developed in 1943 when he was twelve years old, involves the creation of an incision in the patient's calf muscle. Then a beeswax ball is inserted into the wound for 24 hours in order to make room for the insertion of a chick pea wrapped in a combination of common absorbing paper and a wet cabbage leaf. As explained by plaintiff at oral argument, the chick pea absorbs any carcinogens in the patient, curing the disease.

To promote his theory and treatment, plaintiff wrote an

article, " Mechanism Development of cancer," which he sent to a variety of medical journals in the fall and winter of 1995, and again in December of 2000. None of those journals accepted his piece. See Plaintiff's Exhibit 2-7. Plaintiff also attempted to meet with Donna Shalala, (then-First Lady) Hillary Clinton, U.S. senators and representatives. and defendant (as the director of the NCI), but those efforts were similarly unsuccessful.

Plaintiff's letter to Dr. Klausner, dated December 7, 2000, told him about NIA, and asked that the NCI set up a seminar to evaluate plaintiff's cure. Plaintiff's Exhibit 7. In a letter dated December 22, 2000, the NCI sent plaintiff a copy of an NCI fact sheet providing information about the method the NCI used to evaluate proposed cancer treatments. In response, plaintiff filed this claim against Dr. Klausner for "conducting wrong researches and recommending wrong treatments to cure cancer and for not accepting [plaintiff's] NIA treatment method to cure cancer disease." Complaint at 2. He seeks the relief described above.

According to the Declaration of Patricia A. Kvochak, Esq., dated March 9, 2001 ("Kvochak Dec."), there is no documentation indicating that plaintiff has submitted a grant application to the NCI or has filed a claim pursuant to the Federal Tort Claims Act.

DISCUSSION

According to the standards set forth in Lujan v. Defenders of Wildlife, 504U.S. 555, 560 n. 1 (1992), plaintiff lacks the requisite injury necessary to bring suit. Indeed, he lacks even the beginning of a particularized injury, as he has never applied for a grant with the NCI or followed the instructions set forth on the NCI fact sheet that was sent to him in December 2000. See also Ujvarosy v. Sullivan, 1993 U.S. Dist. LEXIS 6330 (May 5, 1993 N.D.Ca.).

As plaintiff's statement at oral argument made clear, the injuries he claims as a result of the alleged wrongful conduct of the defendant are suffered by the recipients of the current cancer treatment. He does not have standing to raise claims on behalf of such persons.

CONCLUSION

For the foregoing reasons, the motion is granted. I need not address the other defects in the complain.

So Ordered

s./John Gleeson/

JOHN GLEESON, U.S.D.J.

Dated: August 1, 2001

Brooklyn, New York